IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 9-10-2006

CORAM

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

AND

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.1091 of 2004
and
CRL.R.C.No.1356 of 2004

C.A.No.1091/2004:

State by:
Inspector of Police
Tirukazhukundram
Chengalpattu District
Crime No.475/2001 .. Appellant

vs

1.Marimuthu
2.Rajaramu
3.Thangaraj
4.Thirunavukarasu
5.Sigamani
6.Kothandu
7.Thulasi
8.Selvam
9.Linganathan
10.Seenu
11.Ganapathy
12.Kanagaraj
13.Elanchiyam .. Respondents (Accused Nos.1 to 6 and 8 to 14)

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CRL.R.C.No.1356 of 2004:

K.Santhi .. Petitioner (PW1)

vs

1.Marimuthu
2.Rajaramu
3.Thangaraj
4.Thirunavukkarasu
5.Sigamani
6.Kothandu
7.Masilamani (deceased)
8.Thulasi
9.Selvam

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10.Linganathan
11.Seenu
12.Ganapathy
13.Kanagaraj
14.Ilanchiyam
15.State of Tamil Nadu by
The Inspector of Police
Tirukalikundram Police Station
Kancheepuram District .. Respondents (Accused Nos. 1 to 14 and Complainant)

Criminal appeal preferred under Sec.378 of Cr.P.C. and the criminal revision case preferred under Sec.397(1) and 401 of Cr.P.C. against the judgment of the Additional District Sessions Judge (Fast Track Court No.I), Chengalpattu, in S.C.No.45 of 2003 dated 4.6.2004.

For Appellant in
CA 1091 of 2004 : Mr.P.Kumaresan, A.P.P.

For Respondents in
CA 1091 of 2004 : Mr.S.A.Rajan
for RR1, 2, 3 and 5 to 13

Mr.S.M.Thamizhselvam
for R-4

For Petitioner in
CRL.RC.1356/2004 : Mr.K.Veeraraghavan

For Respondents in
CRL RC 1356/2004 : Mr.S.A.Rajan
for RR1, 2, 3, 5, 6, 8 to 14
MR.S.M.Thamizhselvam for R4

Mr.Kumaresan, A.P.P.
For R15

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COMMON JUDGMENT

(Judgment of this Court was delivered by M.CHOCKALINGAM, J.)

The State appeals.

2.This judgment shall govern both the appeal in C.A.No.1091 of 2004 and the revision case in Crl.R.C.No.1356/2004 which was brought by P.W.1.

3.A judgment of the Additional Sessions Division, Chengalpattu, made in S.C.No.45 of 2003 recording an order of acquittal of A-1 to A-6 and A-8 to A-14, found therein, who stood charged and tried for the following offences, is challenged herein. A-7 died after the filing of the final report.

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(i) A-1 to A-6 and A-8 to A-14 – under Sec.148 of I.P.C.
(ii) A-1 to A-6 and A-8 to A-14 – under Sec.341 read with 149 of I.P.C.
(iii) A-1 to A-6 and A-8 to A-14 – under Sec.302 read with 149 of I.P.C.
(iv) A-1 to A-6 and A-8 to A-14 – under Sec.342 read with 149 of I.P.C.

4.The case of the prosecution can be stated thus:

(a) P.W.1 is a native of Vallipuram. She is the brother's daughter of the deceased Vadivelu. P.W.2 is the brother's wife of the deceased. P.W.3 is the elder sister of P.W.1 and brother's daughter of the deceased. P.W.4 is the brother's son of the deceased. P.W.5 is the brother of the deceased. P.W.6 is examined as an eyewitness. The junior paternal uncle of P.W.1 by name Thamizhmani was the Panchayat President. A-2 had a quarrel with him in respect of the drinking water distribution. On the date of occurrence namely 26.6.2001, at about 8.30 P.M., P.Ws.1 to 3 and 6 along with one Megathammal went for purchase of grocery, and they were proceeding to Vallipuram Bus Stand. The deceased along with P.W.4 got down from the bus. At that time, A-1 who was armed with an iron rod, gave the whistling sound, and seeing this, all other accused rushed over there, when A-2 to A-5 were armed with iron rods, while A-6 to A-14 were armed with sticks. They waylaid the deceased, and all of them attacked him indiscriminately. He died at the spot. Then, all the accused fled away from the place of occurrence. Immediately, P.W.1 proceeded to the respondent Police Station at about 8.30 P.M. and gave a complaint, which is marked as Ex.P1, to P.W.12, the Sub Inspector of Police, who was on duty at that time. On the strength of Ex.P1, the complaint, a case came to be registered by him in Crime No.475 of 2001 under Sections 147, 148, 341, 342 and 302 of I.P.C. Ex.P23 is the First Information Report, which was sent to the Court.

(b) P.W.13, the Inspector of Police, on receipt of the copy of the F.I.R., took up investigation, proceeded to the spot, made an inspection in the presence of witnesses and prepared an observation mahazar, Ex.P2, and a rough sketch, Ex.P24. Then, he recovered M.Os.1 to 4 under a mahazar, Ex.P3. He sent the dead body to the Chengalpattu Medical College Hospital. He conducted inquest on the dead body of Vadivelu at the mortuary in the presence of witnesses and panchayatdars and prepared Ex.P25, the inquest report. He gave a requisition to the hospital authorities for the purpose of autopsy.

(c) P.W.12, the Professor of Forensic Medicine, Chengalpattu Medical College, Chengalpattu, on receipt of the said requisition, conducted autopsy on the dead body of Vadivelu and found 34 injuries. He issued a postmortem certificate, Ex.P22, with his opinion that the deceased died of multiple injuries.

(d) Pending the investigation, the Investigating Officer arrested A-3 and A-14 on 29.6.2001. A-3 gave a confessional statement, the admissible part of which is marked as Ex.P4. A-14 gave a confessional statement, and the admissible part is marked as Ex.P5. Pursuant to the same, A-3 produced M.O.5, iron rod, which was recovered under Ex.P6, the mahazar. M.O.6, stick, produced by A-14, was recovered under a mahazar, Ex.P7. On 11.7.2001, the Investigator obtained police custody in respect of A-5 to A-9, A-11 and A-12. A-5 to A-9 gave confessional statements. The

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admissible parts are marked as Exs.P8 to P11 respectively. Following the same, they produced the weapons of crime, which were recovered under a cover of mahazar. On 16.7.2001, the Investigator took A-1 into police custody. He gave a confessional statement, the admissible part of which is marked as Ex.P18. At the time of arrest, A-10 gave a confessional statement. The admissible part is marked as Ex.P19. On 30.7.2001, the investigator took A-2 and A-11 who surrendered before the Court, into police custody, and they were enquired. They gave confessional statements, and the admissible parts are marked as Exs.P13 and P14 respectively. Following the same, the weapons of crime were recovered under a cover of mahazar. They were sent for judicial remand. All the material objects recovered from the place of occurrence and from the dead body, and the weapons of crime recovered from the accused pursuant to the confessional statements, were subjected to chemical analysis by the Forensic Sciences Department, which resulted in Exs.P34 and P35, the Chemical Analyst's reports, and Exs.P36 and P37, the Serologist's reports. P.W.14, the Inspector of Police, took up further investigation. On completion of investigation, the Investigator filed the final report.

5.The case was committed to Court of Session, and necessary charges were framed. In order to substantiate the charges, the prosecution examined 14 witnesses and also relied on 37 exhibits and 15 material objects. On completion of evidence on the side of the prosecution, the accused were questioned under Sec.313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses, which they flatly denied as false. On the side of the defence, two witnesses who were officials attached to the Tamil Nadu Electricity Board, Tirukazhukundram Division, were examined through whom Exs.D1 to D4 were marked. On completion of the evidence on both sides, the Court heard the arguments advanced on either side and took the view that the prosecution has not proved the case beyond reasonable doubt. On the reasons adduced in the judgment impugned, it has recorded an order of acquittal. Hence, this appeal. The aggrieved P.W.1 has brought forth the above revision case.

6.Advancing his arguments on behalf of the State, the learned Additional Public Prosecutor would submit that the trial Court has acquitted the accused mainly on the following two grounds:

(i) Firstly, at the time of occurrence, there was no flow of electric energy, for which D.Ws.1 and 2 have been examined. On the date of occurrence namely 26.6.2001 from 7.55 P.M. onwards, for about 1 ½ hours, there was no electric energy in and around Vallipuram Bus Stand. This was spoken to by both D.Ws.1 and 2, who were the Officials attached to the Tamil Nadu Electricity Board, Tirukazhukundram Division. This was also spelt out in the documents, Exs.D1 to D4. Thus, the witnesses, who according to the prosecution, are eyewitnesses, could not have seen the occurrence at all.

(ii) Secondly, so far as the FIR was concerned, according to the prosecution, the case was registered by P.W.12, the Sub Inspector of Police, at 8.30 P.M. on 26.6.2001. When Ex.P1 is looked into, there is a correction found therein. Originally it

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was written as 27.6.2001 and subsequently altered to 26.6.2001. There was no explanation through proper evidence. This would go to show that the report was given only on 27.6.2001. There is also correction as regards time. Originally, it was made as 8'O Clock, and then, it was corrected as 23.00 hours. Under the circumstances, it is highly doubtful whether the FIR has come into existence as put forth by the prosecution.

7.The learned Additional Public Prosecutor would submit that on the above grounds, the lower Court has accepted the defence version and found that the prosecution has not proved the case beyond reasonable doubt.

8.Added further the learned Additional Public Prosecutor that in the instant case, as regards the defence version that there was no flow of electric energy, the evidence of D.Ws.1 and 2 should have been rejected; that according to D.W.2, he took charge and reported to duty by 7.30 P.M. on that day, when he relieved one Arumugam, who was the Officer in charge till that time; that if to be so, the entry what was found in the document, would go to show that it was made at about 7.55 P.M.; that D.W.2 has categorically admitted that the said Arumugam was relieved from duty at about 7.30 P.M.; that under the circumstances, there was no occasion for him to make such an entry at 7.55 P.M.; that it would be quite clear that false entries have been made subsequently in order to make it appear as if there was no flow of electric energy; and that these documents should have been rejected along with the evidence projected through D.Ws.1 and 2

9.The learned Additional Public Prosecutor would further add that in the instant case, so far as the corrections found in Ex.P1, were concerned, they were all well explained through P.W.1, who was the author of Ex.P1, the report; that P.W.1 has categorically stated that it was night hours, and she was in the grip of fear; that after witnessing such a crime, because of the mental frame, she has given such a mistaken version and it was corrected; that under the circumstances, the prosecution was able to explain the corrections made, through the author of Ex.P1; that there was nothing to doubt about the same; that the prosecution was able to show that the reasons relied on by the defence, could not be sustained; that apart from that, all the eyewitnesses examined, have clearly spoken about the overt acts attributed to the accused and the manner of attack and also the weapons held by them; that the medical evidence was also in support of the prosecution case; that the recovery has also been made; that out the three witnesses examined in that regard, one witness has turned hostile; that the two witnesses have spoken about the recovery of weapons of crime from the accused pursuant to the confessional statements; that in such circumstances, the prosecution has proved the case beyond reasonable doubt, and hence, the judgment of the lower Court has got to be set aside and the accused have got to be dealt with in accordance with law.

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10.The Court heard the learned Counsel for the respondents in the appeal on the above contentions.

11.The Court also heard the learned Counsel on either side in the criminal revision case.

12.The Court paid its anxious consideration on the submissions made and also looked into the entire materials available.

13.At the outset, it is apt and proper to state that when the judgment of the trial Court recording an order of acquittal is challenged by the State, unless and until it is seen that the judgment is found to be perverse or the reasons adduced by the trial Court for recording an order of acquittal, do not stand to the reason, the Court should not disturb the judgment. Apart from that, in a given case, where there are two views possible as to the particular situation, the view which is favourable to the accused, should be taken into account. After applying the cardinal principle stated supra, the Court is afraid whether it could set aside the judgment of the trial Court.

14.According to the prosecution, the occurrence has taken place at about 8.30 P.M. on 26.6.2001 at Vallipuram Bus Stand. All the witnesses examined as stated above, were all close relations. If the place of occurrence is actually a busy locality, at least one independent witness should have been examined, but not done so. It is settled principle of law that the non-examination of the independent witness cannot be fatal to the prosecution case. In the instant case, number of doubts were available to reject the prosecution case, as rightly done by the trial Court. Two strong reasons were pointed out by the lower Court. Firstly, there was no electric energy or light, and hence, there was no light available at the time of the occurrence i.e., 8.30 P.M., when the occurrence has taken place on 26.6.2001. For the said purpose, the defence has examined two witnesses who were Officials attached to the Tamil Nadu Electricity Board, Tirukazhukundram Division. D.W.1 has spoken to the fact that there is an entry made in Ex.D2 that there was no electric energy for a period of 1 ½ hours from 7.55 P.M. onwards on that day, and it would also cover the area where the occurrence has taken place. The only contention put forth by the learned Additional Public Prosecutor is that it was a false entry made. From the evidence of D.Ws.1 and 2, it could be well seen that the electric energy having 33 KVA, resumed only at about 9.20 P.M. on that day. Thus, it would be quite clear that the electric energy was not in flow from 7.55 P.M. and it resumed at 9.20 P.M. The occurrence has taken place at about 8.30 P.M. It is seen that the entry has been made at about 7.55 P.M. by one Arumugam. So long as there is nothing to doubt about the entry, this Court is of the considered opinion that it cannot be stated that there was electric energy, and the evidence of the witnesses have got to be believed as put forth by the prosecution. Even in a case, where there was no electric energy or light, if the accused persons were already known to the witnesses, then their evidence have got to be believed. But, in the instant case, it is not the case of the prosecution that there was no light, and even then, the witnesses were able to identify the assailants. The accused were 14 in number, and all were armed with weapons. Ex.P1 has got the clear narration of the entire incident. In a time when there was no flow of electric energy and no light facility, it would be highly difficult for the

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witnesses to witness such an occurrence and gave a narration of entire incident in a graphic manner. It casts a strong doubt against the prosecution case.

15.So far as the FIR was concerned, according to the prosecution, P.W.1 went to the Police Station and gave a complaint to P.W.12, the Sub Inspector of Police, at about 8.30 P.M. on 26.6.2001, and the case came to be registered. When Ex.P1 is looked into, it is seen that all kinds of alterations are made in the same as to the date and time. The contention put forth by the learned Additional Public Prosecutor that P.W.1 has been examined, and she has given an explanation as noted above, does not stand to reason for the simple reason that even at the top of the first page of Ex.P1, there was a correction made. Apart from that, at the place where P.W.1 has signed, there was a correction. It is pertinent to point out that it has been recorded and an endorsement was made by P.W.12. In that also, there were number of corrections as to the date and time in three places. The only competent person who could speak about such corrections, was P.W.12. But, the prosecution did not make any endeavor in that regard. Now, at this juncture, it is pertinent to point out that if the F.I.R. has come into existence at about 8.30 P.M. on 26.6.2001 as put forth by the prosecution, then there is no explanation at all from the prosecution how the FIR was despatched to the Court at 2.00 P.M. on 27.6.2001 and that too after 20 hours delay. The non-explanation as to the sending of the FIR with huge and inordinate delay coupled with all the corrections found in Ex.P1, would go to show that the FIR has come into existence only on 27.6.2001 morning. Thus, it would be quite clear that there is all possibility of embellishment and improvement that could be made. Now, the narration of the incident in Ex.P1, the report, and that too at the time when there was no light facility, coupled with the fact that there is a delay of 20 hours in the FIR reaching the Court, which is situated within half a kilometer from the Police Station, in the opinion of the Court, would be suffice to reject the prosecution case.

16.For the reasons stated above, the judgment of the Court below does not warrant any interference. Hence, this criminal appeal fails and the same is dismissed confirming the judgment of the lower Court. The criminal revision case filed by P.W.1, also fails and the same is dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To:

1)The Additional District and Sessions Judge
(Fast Track Court No.I),
Chengalpattu.

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2. Do Thro the Principal Sessions Judge, Chengalpattu.

3)The Public Prosecutor, High Court, Madras.

4)The Inspector of Police, Tirukazhukundram, Chengalpattu District, Crime No.475/2001

5. The Director General of Police, Chennai.

6. The District Collector, Chengalpattu.

1 cc to Mr.S.L. Sudarsanam, Advocate, Sr. 46930

nsv/

C.A.No.1091 of 2004
and
CRL.R.C.No.1356 of 2004

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